

AT RICHMOND, FEBRUARY 29, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

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STATE CORPORATION COMMISSION

v.

CASE NO. PUC-2007-00040

VERIZON VIRGINIA INC.

and

VERIZON SOUTH INC.,

Defendants.

ORDER

On May 10, 2007, the Staff ("Staff") of the Virginia State Corporation Commission ("Commission") filed a Motion for a Rule to Show Cause ("Motion") requesting that the Commission issue a Rule to Show Cause directing Verizon Virginia Inc. and Verizon South Inc. ("Verizon" or "Company") to show cause why the Company should not be sanctioned for violations of 20 VAC 5-427-130 D of the Rules for Local Exchange Telecommunications Company Service Quality Standards ("Service Quality Rules"), 20 VAC 5-427-10 *et seq.*

On June 8, 2007, the Commission issued an order granting the Motion and issuing a Rule to Show Cause. Verizon filed a response on August 17, 2007. On August 24, 2007, the Commission issued an Order Scheduling Hearing, and the hearing was held on September 25-26, 2007. Lydia R. Pulley, Esquire, David A. Hill, Esquire, and William D. Smith, Esquire, appeared on behalf of Verizon. Robert M. Gillespie, Esquire, appeared on behalf of the Staff. The following witnesses testified for Verizon: Robert W. Woltz, Jr.; Stephen D. Spencer; Tyrone "Ty" Stephenson; Christopher M. Creager; and David W. Ogburn. Steven C. Bradley testified for the Staff. Verizon and the Staff filed post-hearing briefs on October 26, 2007.

NOW THE COMMISSION, having considered this matter, finds as follows.

20 VAC 5-427-150 B states as follows:

A [local exchange carrier ('LEC')] subject to the provisions of this chapter shall, upon request of the commission or the staff, submit a corrective action plan to address any area of demonstrable and continuing concern for service quality performance or to address recurring commission complaints. Such action plan shall be submitted to the staff within 30 days unless otherwise requested by the staff. An action plan shall at a minimum contain:

1. A complete identification of the cause of unsatisfactory performance or commission complaints;
2. An explicit remedy or corrective action and a schedule of implementation of the remedial or corrective action to be taken by a LEC; and
3. A date by which a LEC will complete the remedial or corrective action identified.

While the Staff did not allege a violation of this Rule, it was an issue discussed in the hearing.

We find that Verizon submitted a corrective action plan as set forth in Rule 20 VAC 5-427-150 B and, thus, has not violated such Rule.

We turn next to the issue of whether Verizon should be sanctioned for violating 20 VAC 5-427-130.D. This Rule states as follows:

Out-of-service trouble reports repaired within 24 and 48 hours is a measure of a LEC's ability to restore network service in a timely manner. Out-of-service trouble reports should generally be cleared within 24 hours. The standard for satisfactory performance shall be that, without exception other than as permitted in this chapter, no less than 80% of out-of-service trouble reports are cleared within 24 hours, and that, without exception other than as permitted in this chapter, no less than 95% are cleared within 48 hours, per calendar month, excluding Sundays and LEC-recognized holidays.

Verizon admits that it has not met the specific service quality metrics in 20-VAC 5-427-130 D since the current Service Quality Rules ("Rules") went into effect on November 1, 2005. (Verizon's post-hearing brief at 2).

Verizon offers multiple defenses, but the essence of Verizon's defense is to assert that the service metrics contained in Rule 130 D are merely "advisory." (Verizon's post-hearing brief at 3). We disagree.

We find that the language of 130 D clearly sets forth the standard of service that Verizon and all LECs are expected to meet when clearing out-of-service trouble reports—that is, per calendar month, "no less than 80% of out-of-service trouble reports" should be cleared within 24 hours and "no less than 95%" should be cleared within 48 hours excluding Sundays and holidays—and we reject Verizon's assertion that this standard is in any way vague. The problem with Rule 130 D, however, is not any ambiguity in the standard of service Verizon is expected to meet or the Staff's efforts to require Verizon to comply with the service quality standard. Instead, the problem is that Rule 130 D lacks language specifically directing compliance with the standard, as contrasted with other service quality rules,¹ or a specific penalty for failure to comply with the standard. Accordingly, we conclude that the imposition of a specific fine against Verizon is not supported by the language of Rule 130.D.

In addition, the evidence shows Verizon's failures to comply with the standard were not caused by *force majeure* events such as hurricanes or floods (the Staff is not alleging a violation in the month of September 2006 due to Hurricane Ernesto), but were affected by a deliberate decision by Verizon's top management to prioritize the allocation of resources to the installation of Verizon's fiber-to-the-premises network in those geographic areas in which Verizon plans to offer its fiber product ("FIOS").² Although we find that Rule 130 D does not support the

¹ See, e.g., 20 VAC 5-427-30.A-E, 20 VAC 5-427-40.A-C, 20 VAC 5-427-50, 20 VAC 5-427-60.A-E, 20 VAC 5-427-70.A-D, 20 VAC 5-427-80.A-B, 20 VAC 5-427-90.A-D, 20 VAC 5-427-100, 20 VAC 5-427-110, and 20 VAC 5-427-120.A-I.

² See Verizon's Response to Rule to Show Cause at 1-2, 4-7, 14-15. As stated by Verizon, "as a matter of competitive survival, Verizon has no choice but to deploy a multi-billion dollar overlay fiber network as quickly as

imposition of a specific fine against Verizon, we note that the use of FIOS deployment as an excuse for non-compliance with the standard set forth in Rule 130 D is not persuasive since Verizon's service quality obligations extend to all of its Virginia customers, not just those to whom FIOS is made available.

Finally, the lack of language in Rule 130 D specifically directing compliance with the standard or setting forth a specific penalty for failure to comply with the standard leads to the conclusion that modifications to the Service Quality Rules should be considered. These matters, however, must be considered in a legislative rulemaking, not an adjudicatory proceeding such as this. We intend to initiate a rulemaking on the Service Quality Rules.

Finally, we need not rule on Verizon's November 1, 2007 Motion to Strike, as we have not relied herein on the material sought to be stricken.

Accordingly, IT IS ORDERED THAT this matter be dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Lydia R. Pulley, General Counsel, Mid-Atlantic-South, Jennifer L. McClellan, Esquire, Verizon Virginia Inc., 600 East Main Street, Suite 1100, Richmond, Virginia 23219-2441; John S. Barr, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; and the Commission's Office of General Counsel and Division of Communications.

possible. . . Constructing a new fiber network while maintaining the legacy copper network is challenging, complex and expensive, and *doing so affects Verizon [sic] ability to meet the numeric metrics in Rule 130.D.*" *Id.* at 14-15 (emphasis added). Furthermore, during questioning at the hearing, Robert W. Woltz, Jr., Verizon's president, made the following statement: "[A]re there resources being diverted from the core work to the fiber optic work, those resources are being balanced between them, and so, *sometimes, that means putting priority on the fiber optic network.* . ." (Woltz Tr. at 184-85) (emphasis added).